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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

BURIEN, LLC,

Plaintiff and Respondent,

v.

JAMES A. WILEY,

Defendant and Appellant.

B253555

(Los Angeles County Super. Ct.  
No. SC114545)

APPEAL from an order of the Superior Court of Los Angeles, Gerald Rosenberg,  
Judge. Reversed and remanded.

Campbell & Farahani, Frances M. Campbell, Nima Farahani, for Defendant and  
Appellant.

Dennis P. Block & Associates, Dennis P. Block, Richard Jacobs, for Plaintiff and  
Respondent.

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Landlord Burien, LLC imposed a substantial rent increase, which tenant James A. Wiley refused to pay on the ground that it violated local rent control ordinances. Burien brought an action against Wiley for declaratory relief and intentional interference with prospective economic advantage. The trial court found the rental unit was not exempt from local rent control ordinances and entered judgment in favor of Wiley, which we affirmed. Wiley filed a motion for attorney fees based on a lease provision authorizing recovery of attorney fees in an action to enforce the payment of rent or obtain damages on account of the tenant's failure to pay rent. The trial court found the attorney fees provision did not apply, because Burien's action was not brought to enforce obligations under the lease. Wiley contends the attorney fees provision applies to Burien's action for declaratory relief to enforce the rent increase and obtain damages. We conclude the attorney fees provision of the lease applies to Burien's action. We reverse and remand for further proceedings.

## **FACTS AND PROCEDURAL HISTORY**

Wiley leased a unit in a rent-controlled building in 1981. Burien purchased the unit and served Wiley in March 2011, with a notice changing the terms of the tenancy by increasing the rent from \$1,401 to \$3,000 per month. Wiley refused to pay the increased rent and the Los Angeles Housing Department sent a letter to Burien stating that the rent increase violated the Los Angeles Rent Stabilization Ordinance (Los Angeles Mun. Code § 151.00 et seq.) (LARSO).

On October 19, 2011, Burien filed the complaint in the instant action against Wiley for declaratory relief and intentional interference with prospective economic advantage. The complaint alleged that the parties were in dispute as to the correct and proper rental rate. A present and justiciable dispute existed with regard to the legality and permissibility of Burien's rental rate increase pursuant to the notice of change of terms of tenancy. Burien contended the new rental rate was permissible, while Wiley claimed it violated LARSO. Burien sought a declaration that the correct rental rate was

\$3,000 per month and Civil Code section 1954.52, subdivision (a)(1) exempted the unit from LARSO. Burien also sought costs of suit, compensatory damages, and further relief as the court deemed proper. Wiley's answer requested dismissal of the action with prejudice, as well as costs of suit, including attorney fees. The trial court found the rent increase violated LARSO and entered judgment in favor of Wiley. Burien appealed. This appellate court found the rent control ordinances applied and affirmed the judgment in favor of Wiley. (*Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039.)

On September 23, 2013, Wiley filed a motion seeking an award of attorney fees of \$16,594 based on the attorney fees provision of his lease. He attached a copy of the lease agreement, which provides in pertinent part: "DEFAULTS AND REMEDIES 21. If LESSEE shall be in default in the payment of rent, or under any of the terms of this Lease, or if LESSEE shall vacate or [abandon] the Premises or any part thereof, LESSOR may at any time, with or without notice of demand and without limiting LESSOR in the exercise of any right or remedy which LESSOR may have by reason of such default or abandonment: (a) Terminate LESSEE'S right to possession of the Premises by any lawful means, . . . (b) Maintain LESSEE'S right to possession in which case this Lease shall continue in effect whether or not LESSEE shall have abandoned the Premises . . . (c) Pursue any other remedy now or hereafter available to LESSOR under the laws or judicial decisions of the State of California. If, upon failure of LESSEE to pay the rent as aforesaid, or to comply with any of the other covenants, conditions, rules and regulations of this Lease, action should be brought or notice served on account thereof to enforce the payment of rent or to recover possession of the Premises, or to enforce any provision of this Lease, or to obtain damages, LESSEE agrees to pay LESSOR reasonable costs and expenses in said action or for said notice, including attorneys fees, whether or not such action proceeds to judgment."

Burien opposed the motion for attorney fees on the grounds that the lease was not introduced at trial and the amount of the fee request was excessive, based on Burien's attorney's experience as a specialist in unlawful detainer actions. A hearing was held on October 29, 2013. The trial court concluded Wiley was the prevailing party in the

dispute, but the attorney fees provision of the lease was not broad enough to apply, because the underlying action was not for violation of the lease. Burien's complaint was not an action for rent, damages or enforcement of obligations arising from a breach of the lease. Wiley filed a timely notice of appeal from the order denying attorney fees.

## **DISCUSSION**

### **Standard of Review**

“‘[T]o determine whether an award of attorney fees is warranted under a contractual attorney fees provision, the reviewing court will examine the applicable statutes and provisions of the contract. Where extrinsic evidence has not been offered to interpret the lease, and the facts are not in dispute, such review is conducted de novo. [Citation.]’ [Citation.]” (*Chinn v. KMR Property Management* (2008) 166 Cal.App.4th 175, 182-183.)

### **Noticed Motion was Sufficient**

Burien contends Wiley cannot obtain an award of attorney fees because the lease was not attached to the complaint or introduced at trial. This is incorrect. Wiley's answer included a request for attorney fees, the action was based on the application of statutory law to the terms of the lease, and due process was satisfied by notice of the motion for attorney fees. “It is now well-settled that attorney fees, whether authorized by contract or statute, are recoverable under section 1033.5, subdivision (a)(10) as an element of costs, and rather than claim attorney fees as an element of damages, the proper method to recover attorney fees is as an item of costs awarded upon noticed motion. [Citation.] Attorney fees based on a contract provision do not need to be demanded in the complaint.” (*Chinn v. KMR Property Management, supra*, 166 Cal.App.4th at p. 194.)

## **Reciprocity of Attorney Fees**

Wiley contends Burien's action was "on the contract" within the meaning of Civil Code section 1717, such that an award of attorney fees was equally available to both parties. We agree.

When a contract provides for attorney fees to one party, Civil Code section 1717 makes the right reciprocal. Civil Code section 1717, subdivision (a) states, in pertinent part: "In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs." "Section 1717 was enacted to establish mutuality of remedy where a contractual provision makes recovery of attorney fees available for only one party and to prevent oppressive use of one-sided attorney fees provisions. [Citation.]" (*Milman v. Shukhat* (1994) 22 Cal.App.4th 538, 543.)

"The term 'on a contract' in section 1717 'does not mean only traditional breach of contract causes of action. Rather, "California courts 'liberally construe "on a contract" to extend to any action "[a]s long as an action 'involves' a contract and one of the parties would be entitled to recover attorney fees under the contract if that party prevails in its lawsuit . . . .'" [Citation.]" (*In re Tobacco Cases I* (2011) 193 Cal.App.4th 1591, 1601.) "A complaint for declaratory relief . . . sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the respective parties under a written instrument and requests that these rights and duties be adjudged by the court.' [Citations.] Plainly, a declaratory relief action that seeks to establish the parties' rights under a contract is an action sounding in contract. [Citations.]" (*Exxess Electronixx v. Heger Realty Corp.* (1998) 64 Cal.App.4th 698, 710-711.)

Burien's action for declaratory relief was necessarily dependent on a contract, because the nature of the parties' relationship is contractual. The declaratory relief action was an action on a contract, because it sought an interpretation of the substantive law applicable to Wiley's lease. The court concluded LARSO was part of the substantive law that applied to the terms of the lease agreement. Civil Code section 1717 applies when the relief sought in the underlying action was declaratory in nature, as long as the action involves a contract. (*Milman v. Shukhat*, *supra*, 22 Cal.App.4th at p. 545.) If Burien's interpretation of the statutory law had prevailed, Burien would have used the ruling to change the terms of Wiley's lease. We are satisfied the declaratory relief action was to establish the parties' rights under the lease. This was sufficient to invoke the reciprocity of Civil Code section 1717.

### **Scope of Attorney Fee Provision**

Wiley contends the attorney fee provision was broad enough to include Burien's action for declaratory relief. We agree.

An action for declaratory relief seeking to determine whether a landlord may legally require a tenant to pay increased rent is an action to enforce the payment of rent. (*Harbour Landing-Dolfann, Ltd. v. Anderson* (1996) 48 Cal.App.4th 260, 263 [declaratory relief action seeking an interpretation of the lease as to whether tenant was required to pay increased rent claimed by landlord was action to enforce the parties' rights under the lease].)

In this case, the lease provides for recovery of attorney fees if the lessor brings an action on account of the lessee's failure to pay rent in order to enforce the payment of rent or obtain damages. Burien imposed a rent increase, Wiley failed to pay the increased amount, and collection of the rent increase was the object of Burien's action. The action for declaratory relief was brought to enforce payment of the increased rent and obtain damages. We conclude that the attorney fees provision applies to the instant action and

the matter must be remanded for an award of attorney fees to Wiley as the prevailing party.

### **Attorney Fees on Appeal**

Wiley asks this court to order the trial court to hear any application for attorney fees for legal services on appeal and fix a reasonable amount. A right to an award of attorney fees at trial extends to attorney fees on appeal as well. (See *Harbour Landing-Dolfann, Ltd. v. Anderson, supra*, 48 Cal.App.4th at p. 263; *Milman v. Shukhat, supra*, 22 Cal.App.4th at p. 546.) Wiley is entitled to a reasonable award of attorney fees and costs on appeal. On remand, the trial court should determine the amount of such fees. (Cal. Rules of Court, rules 8.278 & 3.1702.)

### **DISPOSITION**

The postjudgment order denying the motion for attorney fees is reversed and the matter is remanded for a determination of attorney fees at trial and on appeal. Appellant James A. Wiley is awarded his costs on appeal.

KRIEGLER, J.

We concur:

TURNER, P. J.

MOSK, J.